

postponed until Jan. 31, 1997. For the convenience of the reader, the superseded text is set forth as follows:

**§ 54.106 Specifications for official United States standards for grades of carcass beef (quality—steer, heifer, cow).**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum small amount to a maximum small amount (see Figure 1) and the ribeye muscle is slightly firm.

(c) *Select.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Select grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for two maturity groups, which cover the entire range of maturity permitted in the Select grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly light red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum slight amount of marbling is required (see Figure 1) and the ribeye may be moderately soft.

\* \* \* \* \*

**§ 54.107 Specifications for official United States standards for grades of carcass beef (quality—bullock).**

(a) *Prime.* For the Prime grade, the minimum degree of marbling required is a minimum slightly abundant amount for carcasses throughout the range of maturity permitted in the bullock class. The ribeye muscle is moderately firm and, in carcasses having the maximum maturity for this class, the ribeye is light red in color.

(b) *Choice.* For the Choice grade, the minimum degree of marbling required is a minimum small amount for carcasses throughout the range of maturity permitted in the bullock class. The ribeye muscle may be slightly soft and, in carcasses having the maximum ma-

turity for this class, the ribeye is moderately light red in color.

(c) *Select.* For the Select grade, the minimum degree of marbling required is a minimum slight amount for carcasses throughout the range of maturity permitted in the bullock class. The ribeye muscle may be moderately soft and, in carcasses having the maximum maturity for this class, the ribeye is slightly light red in color.

(d) *Standard.* For the Standard grade, the minimum degree of marbling required is a minimum practically devoid amount for carcasses throughout the range of maturity permitted in the bullock class. The ribeye muscle may be soft and, in carcasses having the maximum maturity for this class, the ribeye is slightly dark red in color.

(e) *Utility.* The Utility grade includes only those carcasses that do not meet the minimum requirements specified for the Standard grade.

[42 FR 53921, Oct. 4, 1977, as amended at 45 FR 51763, Aug. 5, 1980. Redesignated at 46 FR 63203, Dec. 31, 1981, and amended at 52 FR 35683, Sept. 23, 1987]

**PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING**

**Subpart A—Inspection and Grading of Egg Products**

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AUTHORITY: 7 U.S.C. 1621–1627.

SOURCE: 36 FR 11795, June 19, 1971, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977 and at 46 FR 63203, Dec. 31, 1981.

### Subpart A—Inspection and Grading of Egg Products

#### DEFINITIONS

#### § 55.1 Meaning of words.

Under the regulations in this part words in the singular shall be deemed to import the plural and vice versa, as the case may demand.

#### § 55.2 Terms defined.

For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively:

*Act* means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U.S.C. 1621 et seq.), or any other Act of Congress conferring like authority.

*Administrator* means the Administrator of the Agricultural Marketing Service (AMS) of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated the authority to act in his stead.

*Applicant* means any interested party who requests any grading or inspection service, or appeal grading or appeal inspection, with respect to any product.

*Chief of the Grading Branch* means the Chief of the Poultry Grading Branch, Poultry Division, Agricultural Marketing Service.

*Class* means any subdivision of a product based on essential physical

characteristics that differentiate between major groups of the same kind, species, or method of processing.

*Condition* means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability; or any condition, including, but not being limited to, the processing, handling, or packaging which affects such product.

*Department* means the U.S. Department of Agriculture.

*Eggs of Current Production* means shell eggs which have moved through the usual marketing channels since the time they were laid and are not in excess of 60 days old.

*Holiday* or *Legal holiday* shall mean the legal public holidays specified by the Congress in paragraph (a) of section 6103, Title 5, of the United States Code.

*Inspection/grading* means (1) the act of determining, according to the regulations, the class, quality, quantity, or condition of any product by examining each unit thereof or a representative sample drawn by a grader; (2) the act of issuing a certificate; or (3) the act of identifying, when requested by the applicant, any product by means of official identification pursuant to the Act and this part.

*Inspection and grading certificate* or *certificate* means a statement, either written or printed, issued by a grader or inspector pursuant to the Act and this part, relative to the class, quality, quantity, and condition of products.

*Inspector/grader* means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to investigate and certify, in accordance with the Act and this part, to shippers of products and other interested parties the class, quality, quantity, and condition of such products.

*Interested party* means any person financially interested in a transaction involving any grading, inspection, or appeal grading or inspection of any product.

*National Supervisor* means (1) the officer in charge of the service of AMS,

and (2) such other employee of AMS as may be designated by him.

*Office of grading* means the office of any grader or inspector.

*Official plant* means any plant in which the facilities and methods of operation therein have been found by the Administrator to be suitable and adequate for grading service or inspection in accordance with this part and in which such service is carried on.

*Person* means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

*Product* or *products* means eggs (whether liquid, frozen, or dried), egg products and any food product which is prepared or manufactured and contains eggs as an ingredient.

*Quality* means the inherent properties of any product which determine its relative degree of excellence.

*Regional Director* means any employee of the Department in charge of the service in a designated geographical area.

*Regulations* means the provisions in this part.

*Sampling* means the act of taking samples of any product for grading or inspection.

*Secretary* means the Secretary of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

*Service* means (1) any grading or inspection, in accordance with the Act and the regulations in this part, of any product, (2) supervision, in any official plant, of the preparation or packaging of any product, or (3) any appeal grading or appeal inspection of any previously graded or inspected product.

*Shell eggs* means the shell eggs of the domesticated chicken, turkey, duck, goose, and guinea.

[36 FR 11795, June 19, 1971, as amended at 36 FR 19301, Oct. 2, 1971; 37 FR 17816, Sept. 1, 1972. Redesignated at 42 FR 32514, June 27, 1977, and amended at 43 FR 60137, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981, and amended at 47 FR 46069, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982]

**§ 55.5 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.**

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said Act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) *Official certificate* means any form of certification, either written or printed, used under this part to certify with respect to the sampling, inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) *Official memorandum* means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part and any report made by an authorized person of services performed pursuant to this part.

(c) *Official mark* means the grade mark, inspection mark, and any other mark or symbol formulated pursuant to the regulations in this part, stating that the product was graded or inspected, or for the purpose of maintaining the identity of the product.

(d) *Official identification* means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been officially graded or inspected and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product,

or affixed to or printed on the packaging material of any product.

(e) *Official device* means a printed label, or other method as approved by the Administrator for the purpose of applying any official mark or other identification to any product of the packaging material thereof.

#### ADMINISTRATION

**§ 55.10 Authority.**

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act and this part. The Administrator is authorized to waive for a limited period any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

[42 FR 2969, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981]

**§ 55.11 Nondiscrimination.**

The conduct of all services and the licensing of graders and inspectors under these regulations shall be accomplished without discrimination as to race, color, religion, sex, national origin, age or disability.

[40 FR 20055, May 8, 1975. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981; 60 FR 49168, Sept. 21, 1995]

#### GENERAL

**§ 55.20 Kinds of services available.**

The regulations in this part provide for the following kinds of services:

(a) Inspection of the processing of products containing eggs in official plants.

(b) Sampling of products.

## § 55.22

(c) Quantity and condition inspection of products.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977 and at 46 FR 63203, Dec. 31, 1981, and amended at 58 FR 42413, Aug. 9, 1993]

### § 55.22 Where service is offered.

Any product may be graded or inspected wherever a grader or inspector is available and the facilities and the conditions are satisfactory for the conduct of the service.

### § 55.24 Basis of service.

(a) Products shall be graded or inspected in accordance with such standards, methods, and instructions as may be issued or approved by the Administrator. All service shall be subject to supervision at all times by the applicable State supervisor, egg products supervisor, Regional Director, and National Supervisor. Whenever the supervisor of a grader or inspector has evidence that such grader or inspector incorrectly graded or inspected a product, such supervisor shall take such action as is necessary to correct the grading or inspection and to cause any improper official identification which appears on the product or containers thereof to be corrected prior to shipment of the product from the place of the initial grading or inspection.

(b) Whenever service is performed on a sample basis, such sample shall be drawn in accordance with the instructions as issued by the Administrator.

### § 55.25 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR part 55 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(b) *Display.*

7 CFR section where identified and described	Current OMB control number
§ 55.10 .....	0581-0146
§ 55.24(a) .....	0581-0146
§ 55.30(a) .....	0581-0146
§ 55.40 .....	0581-0146
§ 55.90(b) .....	0581-0146
§ 55.95(b) .....	0581-0146

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7 CFR section where identified and described	Current OMB control number
§ 55.96 .....	0581-0146
§ 55.120 .....	0581-0146
§ 55.130(a) .....	0581-0146
§ 55.130(b) .....	0581-0146
§ 55.130(c) .....	0581-0146
§ 55.140 .....	0581-0146
§ 55.150 .....	0581-0146
§ 55.160 .....	0581-0146
§ 55.200(a) .....	0581-0146
§ 55.240 .....	0581-0146
§ 55.300 .....	0581-0146
§ 55.340(c) .....	0581-0146
§ 55.370(a) .....	0581-0146
§ 55.380 .....	0581-0146
§ 55.390 .....	0581-0146
§ 55.400 .....	0581-0146
§ 55.420 .....	0581-0146
§ 55.560(a)(1) .....	0581-0146
§ 55.560(b)(1) .....	0581-0146
§ 55.560(b)(3)(ii) .....	0581-0146
§ 55.600 .....	0581-0146

[49 FR 2880, Jan. 24, 1984, as amended at 55 FR 23421, June 8, 1990]

## PERFORMANCE OF SERVICES

### § 55.30 Licensed graders and inspectors.

(a) Any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this part, may be licensed by the Secretary as a grader or inspector.

(b) All licenses issued by the Secretary are to be countersigned by the officer-in-charge of the service of the Agricultural Marketing Service or by any other official of AMS designated by such officer.

(c) No person may be licensed to grade or inspect any product in which he is financially interested.

[36 FR 11795, June 19, 1971, as amended at 37 FR 12918, June 30, 1972. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981]

### § 55.40 Suspension of license; revocation.

Pending final action by the Secretary, any person authorized to countersign a license to perform service may, whenever he deems such action necessary to assure that any grading or inspection services are properly performed, suspend any license to perform

grading or inspection service issued pursuant to this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons, the licensee may file an appeal in writing, with the Secretary, supported by any argument or evidence that he may wish to offer as to why his license should not be further suspended or revoked. After the expiration of the aforesaid 7-day period and consideration of such argument and evidence, the Secretary will take such action as he deems appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 7 days, the license to perform grading or inspection service is revoked.

#### **§ 55.50 Cancellation of license.**

Upon termination of his services as a grader or inspector, each licensee shall surrender his license immediately for cancellation.

#### **§ 55.60 Surrender of license.**

Each license which is canceled, suspended, or revoked shall immediately be surrendered by the licensee to the office of the service in the region in which he is located.

#### **§ 55.70 Identification.**

All graders, inspectors, and supervisors shall have in their possession at all times while on duty and present upon request the means of identification furnished by the Department to such person.

#### **§ 55.80 Political activity.**

All graders and inspectors are forbidden during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate is prohibited, except as authorized by law or regulation of the Department. This applies to all appointees, including, but not being limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful vio-

lation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

[36 FR 11795, June 19, 1971, as amended at 42 FR 2969, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981]

#### **§ 55.90 Authority and duties of inspectors performing service on a resident inspection basis.**

(a) Each inspector is authorized:

(1) To make such observations and inspections as he deems necessary to enable him to certify that products have been prepared, processed, stored, and otherwise handled in conformity with the regulations in this part;

(2) To supervise the marking of packages containing products which are eligible to be identified with official identification;

(3) To retain in his custody, or under his supervision, labels with official identification, marking devices, samples, certificates, seals, and reports of inspectors;

(4) To deface or remove, or cause to be defaced or removed under his personal supervision, any official identification from any package containing products whenever he determines that such products were not processed in accordance with the regulations in this part or are not fit for human food;

(5) To issue a certificate upon request on any product processed in the official plant; and

(6) To use retention tags or other devices and methods as may be approved by the Administrator for the identification and control of products which are not in compliance with the regulations in this part or are held for further examination, and any equipment, utensils, rooms or compartments which are found to be unclean or otherwise in violation of any of the regulations in this part. No product, equipment, utensil, room or compartment shall be released for use until it has been made acceptable. Such identification shall not be removed by anyone other than inspector or grader.

(b) Each inspector shall prepare such reports and records as may be prescribed by the officer-in-charge of the service.

[36 FR 11795, June 19, 1971, as amended at 42 FR 2969, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981]

**§ 55.95 Facilities and equipment to be furnished for use of graders and inspectors in performing service on a resident inspection basis.**

(a) Facilities and equipment for proper sampling, weighing, examination of products and monitoring processing procedures shall be furnished by the official plant for use by inspectors and graders. Such facilities and equipment shall include but not be limited to a room or area suitable for sampling product, and acceptable candling light, flashlight, heavy duty, high speed drill with an eleven sixteenths-inch or larger bit of sufficient length to reach the bottom of containers used for frozen eggs, metal stem thermometer(s), test thermometer(s), stop watch, test weighing scale(s) and test weight(s), test kit for determining the bactericidal strength of sanitizing solutions, and stationary or adequately secured storage box or cage (capable of being locked only by the inspector) for holding official samples.

(b) Acceptable furnished office space and equipment, including but not being limited to, a desk, lockers or cabinets (equipped with a satisfactory locking device) suitable for the protection and storage of supplies, and with facilities for inspectors and graders to change clothing.

[60 FR 49168, Sept. 21, 1995]

**§ 55.96 Schedule of operation of official plants.**

Grading operating schedules for services performed pursuant to § 55.560 shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous 8-hour period per day (excluding not to exceed 1 hour for lunch), 5 consecutive days per week, within the administrative workweek, Sunday through Saturday, for each shift required. Less than 8-hour schedules may be requested and will be ap-

proved if a grader is available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. As an alternative, the normal operating schedule shall consist of a continuous 10-hour period per day (excluding not to exceed 1 hour for lunch), 4 consecutive days per week, within the administrative workweek, Sunday through Saturday for each full shift required. Graders are to be given reasonable advance notice by management of any change in the hours that grading service is requested.

[48 FR 20682, May 9, 1983, as amended at 60 FR 49168, Sept. 21, 1995]

**APPLICATION FOR SERVICE**

**§ 55.100 Who may obtain service.**

(a) An application for service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

(b) Where service is offered: Any product may be graded or inspected, wherever a grader or inspector is available and the facilities and the conditions are satisfactory for the conduct of the service.

**§ 55.120 Authority of applicant.**

Proof of the authority of any person applying for any service may be required at the discretion of the Administrator.

**§ 55.130 How application for service may be made; conditions of resident service.**

(a) *On a fee basis.* An application for any service may be made in any office of grading, or with any grader or inspector at or nearest the place where the service is desired. Such application for service may be made orally (in person or by telephone), in writing or by telegraph. If an application for grading service is made orally, the office of grading, grader or inspector with whom such application is made, or the Administrator may require that the application be confirmed in writing.

(b) *On a resident inspection basis.* An application for inspection on a resident

inspection basis to be rendered in an official plant must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions of the regulations in this part (including, but not being limited to, such instructions governing grading and inspection of products as may be issued from time to time by the Administrator). No member of or delegate to Congress or Resident Commissioner, shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

(c) *Form of application.* Each application for grading or inspecting a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or inspected.

**§ 55.140 Application for inspection in official plants; approval.**

Any person desiring to process products under inspection service must receive approval of such plant and facilities as an official plant prior to the installation of such service. The initial survey, drawings, and specifications to be submitted, changes and revisions in the official plant, and final survey and procedure for plant approval shall be in accordance with and conform with the applicable provisions of § 59.146 of this chapter, regulations governing the inspection of eggs and egg products.

[40 FR 20055, May 8, 1975. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981]

**§ 55.150 When application may be rejected.**

Any application for service may be rejected by the Administrator (a) whenever the applicant fails to meet the requirements of the regulations in this part prescribing the conditions under which the service is made available; (b) whenever the product is owned by or located on the premises of a person currently denied the benefits of the Act; (c) where any individual holding office or a responsible position with or

having a substantial financial interest or share in the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of the Act to any person; (d) where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the Act to obtain service; (e) whenever the applicant, after an initial survey has been made in accordance with § 55.140, fails to bring the plant, facilities, and operating procedures into compliance with the regulations in this part within a reasonable period of time; (f) notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service; (g) when it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or (h) when it appears to the Administrator that prior commitments of the Department necessitate rejection of the application. Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 46069, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982]

**§ 55.160 When application may be withdrawn.**

An application for service may be withdrawn by the applicant at any time before the service is performed upon payment, by the applicant, of all expenses incurred by AMS in connection with such application.



**§ 55.170 Order of service.**

Service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any application for an appeal.

[36 FR 11795, June 19, 1971, as amended at 42 FR 2969, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981]

**§ 55.180 Suspension of plant approval.**

(a) Any plant approval pursuant to the regulations in this part may be suspended for (1) failure to maintain plant and equipment in a satisfactory state of repairs; (2) the use of operating procedures which are not in accordance with the regulations in this part; or (3) alterations of buildings, facilities, or equipment which cannot be approved in accordance with the regulations in this part.

(b) During such period of suspension, inspection service shall not be rendered. However, the other provisions of the regulations in this part pertaining to providing service on a resident basis will remain in effect unless service is terminated in accordance with the terms thereof. If the plant facilities or methods of operation are not brought into compliance within a reasonable period of time to be specified by the Administrator, the application and service shall be terminated. Upon termination of service in an official plant pursuant to the regulations in this part, the plant approval shall also become terminated and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the Administrator, either be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the Department.

## DENIAL OF SERVICE

**§ 55.200 Debarment.**

(a) The following acts or practices or the causing thereof may be deemed sufficient cause for the debarment by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The rules of practice governing

withdrawal of inspection and grading services in formal adjudicatory proceedings instituted by the Secretary (7 CFR, part 1, subpart H) shall be applicable to such a debarment action:

(1) *Misrepresentation, deceptive, or fraudulent act or practice.* Any willful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(i) The making or filing of an application for any service or appeal;

(ii) The making of the product accessible for sampling, grading or inspection;

(iii) The making, issuing or using or attempting to issue or use any certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;

(iv) The use of the terms "United States," "U.S.," "Government Graded," "Federal-State Graded," "U.S. Inspected," "Government Inspected," or terms of similar import in the labeling or advertising of any product;

(v) The use of any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product.

(2) *Use of facsimile forms.* Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal, or identification authorized to be issued or used under the regulations in this part.

(3) *Willful violation of the regulations.* Any willful violation of the regulations in this part or the Act.

(4) *Interfering with a grader, inspector, or employee of AMS.* Any interference with or obstruction or any attempted interference or obstruction of or assault upon any grader, licensee, inspector or employee of AMS in the performance of his duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of AMS, or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of an employee of AMS, or the offering or entering into a private contract or agreement with an employee of AMS for any services to be rendered while employed by AMS.

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(5) *Miscellaneous.* The existence of any of the conditions set forth in § 55.150 constituting the basis for the rejection of an application for grading or inspection service.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and amended at 43 FR 60137, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981]

### § 55.220 Other applicable regulations.

Compliance with the regulations in this part shall not excuse failure to comply with any other Federal or any State or municipal applicable laws or regulations.

### § 55.240 Report of violations.

Each grader and inspector shall report, in the manner prescribed by the Administrator, all violations and non-compliance under the Act and this part of which such grader or inspector has knowledge.

### § 55.260 Reuse of containers bearing official identification prohibited.

The reuse, by any person, of containers bearing official identification is prohibited unless such identification is applicable in all respects to product being packed therein. In such instances, the container and label may be used provided the packaging is accomplished under the supervision of an inspector or grader and the container is in clean, sound condition and lined with a suitable inner liner.

#### IDENTIFYING AND MARKING PRODUCTS

### § 55.300 Approval of official identification.

Labeling procedures, required information on labels, and method of label approval, shall be in accordance with and conform with the applicable provisions of § 59.411 of this chapter, regulations governing the inspection of eggs and egg products, except where "egg

product(s)" is used in § 59.411, the word "product(s)" shall be substituted and used for this part 55.

[40 FR 20055, May 8, 1975. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981]

### § 55.310 Form of official identification symbol and inspection mark.

(a) The shield set forth in Figure 1, containing the letters "USDA," shall be the official identification symbol for the purposes of this part and when used, imitated, or simulated in any manner in connection with a product shall be deemed to constitute a representation that the product has been officially inspected for the purpose of § 55.5.



FIGURE 1.

(b) The inspection marks which are permitted to be used on products shall be contained within the outline of a shield and with the wording and design set forth in Figure 2 of this section, except the plant number may be preceded by the letter "P" in lieu of the word "plant". Alternatively, it may be omitted from the official shield if applied on the container's principal display panel or other prominent location and preceded by the letter "P" or the word "Plant".



FIGURE 2.

[36 FR 11795, June 19, 1971, as amended at 40 FR 20055, May 8, 1975. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981; and amended at 60 FR 49168, Sept. 21, 1995]

**§ 55.320 Products that may bear the inspection mark.**

Products which are permitted to bear the inspection mark shall be processed in an official plant from edible shell eggs or other edible egg products eligible to bear the inspection mark and may contain other edible ingredients. The official mark, when used, shall be printed or lithographed and applied as a part of the principal display panel of the container, but shall not be applied to a detachable cover.

**§ 55.330 Unauthorized use or disposition of approved labels.**

(a) Containers or labels which bear official identification approved for use pursuant to § 55.300 shall be used only for the purpose for which approved. Any unauthorized use or disposition of approved containers or labels which bear any official identification may result in cancellation of the approval and denial of the use of containers or labels bearing official identification or denial of the benefits of the Act pursuant to the provisions of § 55.200;

(b) The use of simulations or imitations of any official identification by any person is prohibited;

(c) Upon termination of inspection service in an official plant pursuant to the regulations in this part, all labels or packaging material bearing official

identification to be used to identify product packed by the plant shall either be destroyed, or have the official identification completely obliterated under the supervision of a USDA representative, or, if to be used at another location, modified in a manner acceptable to the Service.

[36 FR 11795, June 19, 1971, as amended at 40 FR 20055, May 8, 1975; 42 FR 2969, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981; and amended at 60 FR 49168, Sept. 21, 1995]

**§ 55.340 Supervision of marking and packaging.**

(a) *Evidence of label approval.* No grader or inspector shall authorize the use of official identification on any inspected product unless he has on file evidence that such official identification or packaging material bearing such official identification has been approved in accordance with the provisions of § 55.300.

(b) *Affixing of official identification.* No official identification may be affixed to or placed on or caused to be affixed to or placed on any product or container thereof except by a grader or inspector or under the supervision of a grader or inspector or other person authorized by the Administrator. All such products shall have been inspected in accordance with the regulations in this part. The grader or inspector shall have supervision over the use and handling of all material bearing any official identification.

(c) *Labels for products sold under Government contract.* The grader or inspector-in-charge may approve labels for containers of product sold under a contract specification to governmental agencies when such product is not offered for resale to the general public: *Provided*, That the contract specifications include complete specific requirements with respect to labeling, and are made available to the grader or inspector.

**§ 55.350 Accessibility of product.**

Each product for which service is requested shall be so placed as to disclose fully its class, quality, quantity, and condition as the circumstances may warrant.

**§ 55.360 Certificates.**

Certificates (including appeal certificates) shall be issued on forms approved by the Administrator.

**§ 55.370 Certificate issuance.**

(a) *Resident service.* Certificates will be issued only upon a request therefor by the applicant or AMS. When requested, an inspector shall issue a certificate covering product inspected by him. In addition, an inspector may issue a certificate covering product inspected in whole or in part by another inspector when the inspector has knowledge that the product is eligible for certification based on personal examination of the product or official inspection records.

(b) *Other than resident service.* Each inspector shall, in person or by his authorized agent, issue a certificate covering each product inspected by him. An inspector's name may be signed on a certificate by a person other than the inspector, if such person has been designated as the authorized agent of such inspector by the National Supervisor: *Provided*, That the certificate is prepared from an official memorandum of inspection signed by the inspector: *And provided further*, That a notarized power of attorney authorizing such signature has been issued to such person by the inspector and is on file in the office of the service. In such case, the authorized agent shall sign both his own and the inspector's name, e.g., "John Doe by Richard Roe."

**§ 55.380 Disposition of certificates.**

The original and a copy of each certificate, issued pursuant to § 55.370 and not to exceed two additional copies thereof if requested by the applicant prior to issuance, shall, immediately upon issuance, be delivered or mailed to the applicant or person designated by him. Other copies shall be filed and retained in accordance with the disposition schedule for inspection program records.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977 and at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 46069, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982]

**§ 55.390 Advance information.**

Upon request of an applicant, all or part of the contents of any certificate issued to such applicant may be telephoned or telegraphed to him, or to any person designated by him, at his expense.

## APPEALS

**§ 55.400 Who may request an appeal grading or inspection or review of a grader's or inspector's decision.**

An appeal grading or inspection may be requested by any interested party who is dissatisfied with the determination by a grader or inspector of the class, quality, quantity, or condition of any product, as evidenced by the USDA inspection mark and accompanying label, or as stated on a certificate and a review may be requested by the operator of an official plant with respect to a grader's or inspector's decision or on any other matter related to grading or inspection in the official plant.

**§ 55.410 Where to file an appeal.**

(a) *Appeal of resident grader's or inspector's grading or decision in an official plant.* Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which was graded or inspected by a grader or inspector in an official plant and has not left such plant, and the operator of any official plant who is not satisfied with a decision by a grader or inspector on any other matter relating to grading or inspection in such plant may request an appeal grading or inspection or review of the decision by the grader or inspector by filing such request with the grader's or inspector's immediate supervisor.

(b) *All other appeal requests.* Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which has left the official plant where it was graded or inspected or which was graded or inspected other than in an official plant may request an appeal grading or inspection by filing such request with the Regional Director in the region

where the product is located or with the Chief of the Grading Branch.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981; and amended at 60 FR 49168, Sept. 21, 1995]

**§ 55.420 How to file an appeal.**

The request for an appeal grading or inspection or review of a grader's or inspector's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision which is questioned, and the reason(s) for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal grading or inspection site shall be provided to the appeal grader or inspector assigned to make the appeal grading or inspection.

[60 FR 49168, Sept. 21, 1995]

**§ 55.430 When an application for an appeal grading or inspection may be refused.**

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, class, quality, quantity, or that the condition of the product has undergone a material change since the original grading or inspection, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal grading or inspection may be refused. In such case, the applicant shall be promptly notified of the reason(s) for refusal.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981; and amended at 60 FR 49168, Sept. 21, 1995]

**§ 55.440 Who shall perform the appeal.**

(a) An appeal grading or inspection or review of a decision requested under § 55.410(a) shall be made by the grader's or inspector's immediate supervisor or by a licensed grader or inspector assigned by the immediate supervisor other than the grader or inspector

whose grading or inspection or decision is being appealed.

(b) Appeal gradings or inspections requested under § 55.410(b) shall be performed by a grader or inspector other than the grader or inspector who originally graded or inspected the product.

(c) Whenever practical, an appeal grading or inspection shall be conducted jointly by two graders or inspectors. The assignment of the grader(s) or inspector(s) who will make the appeal grading or inspection under § 55.410(b) shall be made by the Regional Director or the Chief of the Grading Branch.

**§ 55.450 Procedures for selecting appeal samples.**

(a) Prohibition on movement of product. Products shall not have been moved from the place where the grading or inspection being appealed was performed and must have been maintained under adequate refrigeration, when applicable.

(b) *Laboratory analyses.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original sample containers cannot be located, the appeal sample shall consist of product taken at random from double the number of original sample containers.

(c) *Condition inspection.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981; and amended at 60 FR 49168, Sept. 21, 1995]

**§ 55.460 Appeal certificates.**

Immediately after an appeal grading or inspection is completed, an appeal certificate shall be issued to show that the original grading or inspection was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any

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previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal grader or inspector assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the National Supervisor.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981; and amended at 60 FR 49168, Sept. 21, 1995]

### FEES AND CHARGES

#### **§ 55.500 Payment of fees and charges.**

(a) Fees and charges for any service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and §§ 55.510 through 55.560, both inclusive. If so required by the grader or inspector, such fees and charges shall be paid in advance.

(b) Fees and charges for any service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, draft, or money order payable to the Agricultural Marketing Service and remitted promptly to AMS.

(c) Fees and charges for any service under a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement.

[36 FR 11795, June 19, 1971, as amended at 42 FR 2969, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981]

#### **§ 55.510 Fees and charges for services other than on a continuous resident basis.**

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service (other than for an appeal) performed, in accordance with this part on a fee basis shall be based on the applicable rates specified in §§ 55.510 through 55.560, both inclusive.

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to per-

form the services. The hourly charge shall be \$33.64 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$35.52 per hour. Information on legal holidays is available from the Supervisor.

(d) The cost of an appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision shall be borne by the appellant at an hourly rate of \$27.36 for time spent performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and amended at 46 FR 8, Jan. 2, 1981. Redesignated at 46 FR 63203, Dec. 31, 1981, and amended at 59 FR 52637, Oct. 18, 1994]

#### **§ 55.530 Travel expenses and other charges.**

Charges are to be made to cover the cost of travel and other expenses incurred by the Department in connection with rendering grading service. Such charges shall include the costs of transportation, per diem, shipping containers, postage, and any other expenses.

[42 FR 2969, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and amended at 46 FR 8, Jan. 2, 1981. Redesignated at 46 FR 63203, Dec. 31, 1981]

#### **§ 55.560 Charges for continuous inspection and grading service on a resident basis.**

Fees to be charged and collected for service on a resident basis shall be those provided in this section. The fees to be charged for any appeal grading or inspection shall be as provided in § 55.510.

(a) *Charges.* The charges for the service shall be paid by the applicant and shall include items listed in this section as are applicable. Payment for the

full cost of the service rendered to the applicant shall be made by the applicant to the Agricultural Marketing Service, U.S. Department of Agriculture. Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading and inspection service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt.

(1) An inauguration charge of \$310 will be made at the time an application for service is signed except when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) or inspector(s) for a period of 6 months, the application will be considered terminated, but a new application may be filed at any time. In addition, there will be a charge of \$300 if the application is terminated at the request of the applicant for reasons other than for a change in location, within 12 months from the date of the inauguration of service.

(2) A charge for the salary and other costs, as specified in this subparagraph, for each grader or inspector while assigned to a plant, except that no charge will be made when the assigned grader or inspector is temporarily reassigned by AMS to perform grading or inspection service for other than the applicant. Base salary rates will be determined on a national average for all official plants operating in States under a Federal Trust Fund Agreement where Federal graders, State graders, or a combination of Federal and State graders are used, by averaging the salary rates paid to each Federal or State grader assigned to such plants. Charges to plants are as follows:

(i) For all regular hours of work scheduled and approved as an established tour of duty for a plant, the regular rate charge will be made. The regular rate charge will be determined by adding an amount to the base salary rate to cover the costs to AMS for such items as the Employer's Tax imposed

under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, groups life insurance, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs.

(ii) All hours worked by an assigned grader or inspector or another grader or inspector in excess of the approved tour of duty, or worked on a non-scheduled workday, or actually worked on a holiday in excess of the tour of duty, will be considered as overtime. The charge for such overtime will be 150 percent of the grader's or inspector's base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader's or inspector's base rate.

(iv) For work performed between 6 p.m. and 6 a.m., night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For work performed on Sunday, Sunday differential charges (for regular, overtime, or holiday hours worked on Sunday) will be at the applicable rates established plus 25 percent of the base rate.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 55.510.

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of \$215 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

(b) *Other provisions.* (1) The applicant shall designate in writing the employees of the applicant who will be required and authorized to furnish each grader or inspector with such information as may be necessary for the performance of the service.

(2) AMS will provide, as available, an adequate number of graders or inspectors to perform the service. The number of graders or inspectors required

will be determined by AMS based on the expected demand for service.

(3) The service shall be provided at designated locations and shall be continued until the service is suspended, withdrawn, or terminated by:

- (i) Mutual consent;
- (ii) Thirty (30) days' written notice, by either the applicant or AMS specifying the date of suspension, withdrawal, or termination;
- (iii) One (1) day's written notice by AMS to the applicant if the applicant fails to honor any invoice within thirty (30) days after date of invoice covering the cost of the grading and inspection service; or
- (iv) Action taken by AMS pursuant to the provisions of § 55.180 or § 55.200.

(4) Graders or inspectors will be required to confine their activities to those duties necessary in the rendering of service and such closely related activities as may be approved by the Administrator.

(5) When similar services are furnished to the same applicant under part 56 or part 70 of this chapter, the charges listed in this section shall not be repeated.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977. Redesignated at 46 FR 63203, Dec. 31, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 55.560, see the List of CFR Sections Affected in the Finding Aids section of this volume.

#### **§ 55.570 Fees for service performed under cooperative agreement.**

The fees to be charged and collected for any service performed under cooperative agreement shall be those provided for by such agreement.

#### **SANITARY AND PROCESSING REQUIREMENTS**

#### **§ 55.600 General.**

Except as otherwise approved by the Administrator, the sanitary, processing, and facility requirements, as applicable, shall be the same for the product processed under this part as for egg products processed under §§ 59.500 through 59.580(c) of this chapter and § 55.650.

#### **§ 55.650 Inspection and grading.**

Examinations of the ingredients, processing, and the product shall be made to assure the production of a wholesome, unadulterated, and properly labeled product. Such examinations include, but are not being limited to:

(a) Sanitation checks of plant premises, facilities, equipment, and processing operations.

(b) Checks on ingredients and additives used in products to assure that they are not adulterated, are fit for use as human food, and are stored, handled, and used in a sanitary manner.

(c) Examination of the eggs or egg products used in the products to assure they are wholesome, not adulterated, and comply with the temperature, pasteurization, or other applicable requirements.

(d) Inspection during the processing and production of the product to determine compliance with any applicable standard or specification for such product.

(e) Examination during processing of the product to assure compliance with approved formulas and labeling.

(f) Test weighing and organoleptic examinations of finished product.

### **Subpart B—Official U.S. Standards for Palatability Scores for Dried Whole Eggs**

#### **§ 55.800 Preparation of samples for palatability test.**

Reconstitute 33 grams of dried whole egg powder as completely as possible with 90 grams of distilled water in a suitable, clean container. Add the water and mix until the mixture is smooth and free from lumps. Place the container in gently boiling water and stir the mixture while coagulation takes place. When coagulated to the consistency of scrambled eggs, the sample is ready for the palatability test.

#### **§ 55.820 Palatability scores for dried whole eggs.**

The palatability score of the prepared sample shall be determined by a panel of officially qualified graders of



dried eggs of the Agricultural Marketing Service, and shall be rated in accordance with the following table:

Score	Description of Quality
8 .....	No detectable off flavor, comparable to high quality fresh shell eggs.
7½ .....	Very slight off flavor.
7 .....	Slight but not unpleasant off flavor.
6½ .....	Definite but not unpleasant off flavor.
6 .....	Pronounced off flavor (slightly unpleasant).
5 .....	Unpleasant off flavor.
4 .....	Definite unpleasant off flavor.
3 .....	Pronounced unpleasant off flavor.
2 .....	Repulsive flavor.
1 .....	Definite repulsive flavor.
0 .....	Pronounced repulsive flavor.

[36 FR 11795, June 19, 1971. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 46070, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982]

## PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

### Subpart A—Grading of Shell Eggs

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- 56.35 Authority to use, and approval of official identification.  
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- 56.39 Quality assurance inspector required.  
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- 56.45 Payment for fees and charges.  
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#### GRADING CERTIFICATES

- 56.55 Grading certificates and sampling report forms.  
56.56 Grading certificate issuance.  
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#### APPEAL OF A GRADING OR DECISION

- 56.60 Who may request an appeal grading or review of a grader's decision.  
56.61 Where to file an appeal.  
56.62 How to file an appeal.  
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